

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HENRY A. JONES JR.,

Case No. CV 15-5884 DDP (SS)

Plaintiff,

MEMORANDUM AND ORDER

v.

DISMISSING COMPLAINT WITH

C. WU,

LEAVE TO AMEND

Defendant.

I.

INTRODUCTION

On August 4, 2015, Plaintiff Henry A. Jones Jr. ("Plaintiff") filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (the "Complaint"). For the reasons stated below, the Complaint is dismissed with leave to amend.¹

¹ Magistrate judges may dismiss a complaint with leave to amend without approval of the district judge. See McKeever v. Block, 932 F.2d 795, 795 (9th Cir. 1991).

1 Congress mandates that district courts initially screen
 2 civil complaints filed by prisoners seeking redress from a
 3 governmental entity or employee. 28 U.S.C. § 1915A(b). This
 4 Court may dismiss such a complaint, or any portions thereof,
 5 before service of process if the Court concludes that the
 6 complaint (1) is frivolous or malicious, (2) fails to state a
 7 claim upon which relief can be granted, or (3) seeks monetary
 8 relief from a defendant who is immune from such relief. 28
 9 U.S.C. § 1915A(b) (1)-(2); see also Lopez v. Smith, 203 F.3d
 10 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

11

12 **II.**13 **ALLEGATIONS AND CLAIMS OF THE COMPLAINT**

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15 In the caption of the Complaint, Plaintiff identifies only
 16 Dr. C. Wu, an employee of the California Department of
 17 Corrections and Rehabilitation, as a defendant. (Complaint 1).
 18 However, in the body of the Complaint, and specifically under the
 19 first cause of action, Plaintiff complains of actions of "other
 20 CDCR [d]octors," but does not specifically identify them. (Id.
 21 at 4).

22

23 In 2007, Plaintiff was implanted with a defibrillator
 24 "having had a family history of [prolonged] QT leading to heart
 25 attacks."² (Id. at 2). In 2010, Plaintiff "was led to believe

26

27 ² According to the Complaint, a "prolonged QT[] interval places
 28 a patient at an increased risk of experiencing sudden cardiac
 death." (Complaint at 3-4).

1 that he[] did not need a [defibrillator] by Dr. Sohota and the
 2 M[A]RS committee at [f]olsom state prison."³ (Id.). On or about
 3 August 13, 2013, Plaintiff was transferred to "Lancaster state
 4 prison where he was seen by medical and informed [that] he did
 5 not need the [defibrillator] no more and sched[]uled to have it
 6 removed." (Id. at 3). In 2013, "[Nurse] Debbie told [P]laintiff
 7 that they were not going to send [him] out any more, but were
 8 just going to let the batteries die." (Id. at 2). Plaintiff
 9 alleges that he was denied medical maintenance of his
 10 defibrillator for "2 year[s], and or about 2013." (Id.).

11

12 Plaintiff alleges that "Dr. Wu and other CDCR [d]octors
 13 listed above" conspired with each other to deny [P]laintiff the
 14 mainten[an]ce [and] up keep of his [defibrillator]." (Id. at 4).
 15 Although Plaintiff does not specifically identify the "other CDCR
 16 [d]octors," he appears to be attempting to bring a cause of
 17 action against the several members of the "M[A]RS committee" he
 18 names in the body of the Complaint. (See Complaint, Exhibit A;
 19 see also Complaint at 2). Plaintiff also alleges that use of
 20 Defendants "individual authority and position [] constitute[s] a
 21 conspiracy to deny" him due process. (Complaint at 4).

22

23 Plaintiff seeks compensatory damages of \$1,000,000.00,
 24 punitive damages of \$1,000,000.00, and declaratory relief. (Id.
 25 at 4).

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27 ³ Plaintiff states that the "M[A]RS committee at [f]olsom state
 28 prison . . . includes Dr(s) Hamkar; Nangalama; Bobbala;
 Moghaddam; Ma; Wendell; and Duc." (Complaint at 2).

III.

DISCUSSION

Under 28 U.S.C. § 1915A(b), the Court must dismiss the complaint due to defects in pleading. Pro se litigants in civil rights cases, however, must be given leave to amend their complaints unless it is absolutely clear that the deficiencies cannot be cured by amendment. Lopez, 203 F.3d at 1127-29. Accordingly, the Court grants Plaintiff leave to amend, as indicated below.

A. The Complaint Fails To State A Claim For Deliberate Indifference To A Serious Medical Need

15 Although the complaint is not entirely clear, it appears
16 that Plaintiff claims that Defendants were deliberately
17 indifferent to his medical needs because they failed to provide
18 maintenance for his defibrillator. (See Complaint at 1-4).

To state a claim for deliberate indifference to serious medical needs, a prisoner must show that he was confined under conditions posing a risk of "objectively, sufficiently serious" harm and that the officials had a sufficiently culpable state of mind in denying the proper medical care. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006). There must be a purposeful act or failure to act on the part of the official resulting in harm to Plaintiff. See Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). Deliberate indifference "'entails something more

1 than mere negligence.'" Hearns v. Terhune, 413 F.3d 1036, 1040
2 (9th Cir. 2005) (quoting Farmer v. Brennan, 511 U.S. 825, 835
3 (1994)).

4

5 Plaintiff's allegations fail to state a claim for deliberate
6 indifference. Plaintiff asserts that Defendants failed to
7 maintain his defibrillator. However, according to the Complaint,
8 the defibrillator was removed because Plaintiff was no longer in
9 need of it. (See Complaint at 3). Plaintiff's allegations do
10 not satisfy the elements for a deliberate indifference claim.
11 Plaintiff must allege, if he can, facts showing that each
12 specific Defendant was aware that denying Plaintiff maintenance
13 of his defibrillator posed a serious risk of harm and that they
14 were deliberately indifferent to the serious health risk it
15 posed. Plaintiff must also explain how each individual
16 Defendant's actions or inactions directly caused Plaintiff harm.
17 Accordingly, the Complaint must be dismissed, with leave to
18 amend.

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20 **B. The Complaint Fails To State A Claim For Conspiracy**

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22 Plaintiff also alleges that Defendants engaged in a
23 conspiracy to deny him the maintenance of his defibrillator and
24 his due process rights. (Id. at 4). A conspiracy claim brought
25 under section 1983 requires proof of "'an agreement or meeting of
26 the minds to violate constitutional rights,'" Franklin v. Fox,
27 312 F.3d 423, 441 (9th Cir. 2001) (quoting United Steel Workers
28 of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1540-41 (9th Cir.

1 1989) (citation omitted)), and an actual deprivation of
2 constitutionally protected right, Hart v. Parks, 450 F.3d 1059,
3 1071 (9th Cir. 2006) (quoting Woodrum v. Woodward County,
4 Oklahoma, 866 F.2d 1121, 1126 (9th Cir. 1989)).

5

6 Plaintiff has failed to allege any plausible facts
7 supporting the existence of a conspiracy among Defendants.
8 Plaintiff must show that the individual Defendants conspired to
9 deprive him of his constitutional rights. Plaintiff must clearly
10 explain the nature and purpose of the conspiracy and what each
11 individual Defendant did as a participant in the conspiracy. See
12 Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011) (requiring
13 "sufficient allegations of underlying facts" showing the
14 involvement of each defendant in the constitutional violation to
15 state a claim). As such, the Complaint must be dismissed with
16 leave to amend.

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18 C. **The Complaint Fails To Satisfy Federal Rule Of Civil**
19 **Procedure 8**

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21 Federal Rule of Civil Procedure 8(a)(2) requires that a
22 complaint contain "'a short and plain statement of the claim
23 showing that the pleader is entitled to relief,' in order to
24 'give the defendant fair notice of what the . . . claim is and
25 the grounds upon which it rests.'" Bell Atlantic Corp. v.
26 Twombly, 550 U.S. 544, 555, (2007). Rule 8(e)(1) instructs that
27 "[e]ach averment of a pleading shall be simple, concise, and
28 direct." A complaint violates Rule 8 if a defendant would have

1 difficulty understanding and responding to the complaint.
2 Cafasso, U.S. ex rel. v. General Dynamics C4 Systems, Inc., 637
3 F.3d 1047, 1059 (9th Cir. 2011).

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5 Here, the Complaint does not comply with the standards of
6 Rule 8. The Complaint contains potentially relevant and
7 irrelevant disjointed factual assertions rendering the claim
8 confusing. In addition, because Plaintiff is not required to
9 provide evidence supporting his claim at this stage of the
10 litigation, the exhibits attached to the Complaint are
11 unnecessary. Further, some of the exhibits are irrelevant. For
12 example, Plaintiff provides several pages from his administrative
13 appeal for his request of the names of the "M[A]RS committee"
14 members. (See Complaint, Exhibit C at 29-33). Plaintiff also
15 appends a December 3, 2014 "Order and Findings and
16 Recommendations" from a prior civil rights action that Plaintiff
17 brought against a different defendant based on a different claim,
18 albeit regarding his defibrillator. (Id. at 8-27). Plaintiff
19 has also failed to clearly identify the "other CDCR Doctors" and
20 failed to name all the Defendants in a single list in the same
21 section of the Complaint. Consequently, the Complaint fails to
22 provide a simple, concise and direct statement of the violation
23 alleged to allow a defendant to have fair notice of the claim
24 against him and the ability to adequately respond. See Twombly,
25 550 U.S. at 555. Accordingly, the Complaint is dismissed with
26 leave to amend. Should Plaintiff choose to file an Amended
27 Complaint, Plaintiff is advised to name all Defendants in the
28 same section of the Complaint and to clearly identify the nature

1 of the legal claims he is bringing, the specific facts giving
2 rise to his claims against each individual Defendant, and the
3 relief sought.

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5 **IV.**

6

CONCLUSION

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8 For the reasons stated above, the Complaint is dismissed
9 with leave to amend. If Plaintiff still wishes to pursue this
10 action, he is granted **thirty (30) days** from the date of this
11 Memorandum and Order within which to file a First Amended
12 Complaint. In any amended complaint, the Plaintiff shall cure
13 the defects described above. **Plaintiff shall not include new**
14 **defendants or new allegations that are not reasonably related to**
15 **the claims asserted in the original complaint.** The First Amended
16 Complaint, if any, shall be complete in itself and shall bear
17 both the designation "First Amended Complaint" and the case
18 number assigned to this action. It shall not refer in any manner
19 to any previously filed complaint in this matter.

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21 In any amended complaint, Plaintiff should confine his
22 allegations to those operative facts supporting each of his
23 claims. Plaintiff is advised that pursuant to Federal Rule of
24 Civil Procedure 8(a), all that is required is a "short and plain
25 statement of the claim showing that the pleader is entitled to
26 relief." **Plaintiff is strongly encouraged to utilize the**
27 **standard civil rights complaint form when filing any amended**
28 **complaint, a copy of which is attached.** In any amended

1 complaint, Plaintiff should identify the nature of each separate
2 legal claim and make clear what specific factual allegations
3 support each of his separate claims. Plaintiff is strongly
4 encouraged to keep his statements concise and to omit irrelevant
5 details. It is not necessary for Plaintiff to cite case law or
6 include legal argument. Plaintiff is also advised to omit any
7 claims for which he lacks a sufficient factual basis.

9 Plaintiff is explicitly cautioned that failure to timely
10 file a First Amended Complaint, or failure to correct the
11 deficiencies described above, will result in a recommendation
12 that this action be dismissed with prejudice for failure to
13 prosecute and obey Court orders pursuant to Federal Rule of Civil
14 Procedure 41(b). Plaintiff is further advised that if he no
15 longer wishes to pursue this action, he may voluntarily dismiss
16 it by filing a Notice of Dismissal in accordance with Federal
17 Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is
18 attached for Plaintiff's convenience.

20 DATED: November 30, 2015

/S/
SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE